

OPERATION GUIDE

DATE	GENERAL CLASSIFICATION	SUBJECT	NUMBER
03-09-05	Claim Practices Fire	Water Damage Losses	75-20

I. PURPOSE

This Operation Guide provides information and establishes guidelines for handling water damage claims.

II. GENERAL

Homeowners policy forms provide coverage under certain situations for direct loss caused by water. Building structures are covered for accidental direct physical loss, unless specifically excluded, while personal property is covered on a named perils basis.

The following discussion of water damage losses is based upon contract language contained within the Homeowners policy. All policy language quoted is found in Homeowners forms FP-7955, FP-7945, and FP-7155.5 unless otherwise noted. Coverage may apply differently in other types of policies. When adjusting losses where the policy language differs from the language cited, refer to that particular contract.

III. SECTION I - LOSSES NOT INSURED

Most policies contain the following or similar language.

LOSSES NOT INSURED, paragraph 1. states:

"We do not insure for any loss to the property described in Coverage A which consists of, or is directly and immediately caused by, one or more of the perils listed in items a. through n. below, regardless of whether the loss occurs suddenly or gradually, involves isolated or widespread damage, arises from natural or external forces, or occurs as a result of any combination of these:"

A. Freezing

"b. freezing of a plumbing, heating, air conditioning or automatic fire protective sprinkler system, or of a household appliance, or by discharge, leakage or overflow from within the system or appliance caused by freezing. This exclusion only applies while the dwelling is vacant, unoccupied, or being constructed. This exclusion does not apply if you have used reasonable care to:

(1) maintain heat in the building; or

(2) shut off the water supply and drain the system and appliances of water;"

When the insured dwelling is vacant, unoccupied, or under construction, losses caused by freezing are not covered unless the insured uses reasonable care to maintain heat in the dwelling or has turned off the water supply and drained systems and appliances of water. If the insured uses reasonable care and still sustains a loss caused by freezing, we would pay the reasonable cost to repair or replace the damaged system or appliance, including the cost to thaw frozen pipes and drainage systems in addition to the resultant water damage to covered personal property.

Exercise good judgment when determining whether the insured has used "reasonable care" since this standard may vary depending upon time of year, geography, etc. For more specific information on freeze losses, see OG 75-100.

B. Continuous and Repeated Seepage or Leakage of Water

"f. continuous or repeated seepage or leakage of water or steam from a:

(1) heating, air conditioning or automatic fire protective sprinkler system;

(2) household appliance; or

(3) plumbing system, including from, within or around any shower stall, shower bath, tub installation, or other plumbing fixture, including their walls, ceilings or floors;

which occurs over a period of time."

Losses resulting from normal wear and tear, deterioration, or neglect are not covered.

Homeowners forms FP-7923 and FP-7925 exclude continuous or repeated seepage or leakage of water or steam which occurs over a period of time "and results in deterioration, corrosion, rust, mold, or wet or dry rot." This language is absent in forms FP-7955, FP-7945, and FP-7155.5 and is considered a reduction in coverage.

C. Continuous and Repeated Seepage or Leakage of Water - Tear Out

"f... If loss to covered property is caused by water or steam not otherwise excluded, we will cover the cost of tearing out and replacing any part of the building necessary to repair the system or appliance. We do not cover loss to the system or appliance from which the water or steam escaped;"

Tear out and replacement applies only to a building, and only when a covered loss or damage occurs to insured property. We pay for tear out and replacement of driveways, sidewalks, patios, and other structures that qualify as dwelling extensions only if damage to the plumbing system or appliance is a covered loss, and tear out of the driveway, sidewalk, etc., is necessary for repairs.

Tear out and replacement of concrete slabs when the leak is in a slab on grade foundation requires evaluation on a case-by-case basis. The presence of a "hot spot" in a slab without resultant damage is not sufficient evidence of a covered loss to trigger coverage tear out. Determine first whether a covered event, such as lightning or freezing, caused the pipe to leak. Such losses can occur because of gradual deterioration of the water pipe or electrolysis. In some cases where a decision cannot be rendered simply by asking relevant questions, the claim representative can consider payment for exploratory tear out to determine coverage by a visual inspection. If the inspection reveals no damage to the plumbing caused by a covered loss, we will only pay the cost of the tear out for inspection purposes. We will not pay to repair the inspection damage. Communicate this position to the policyholder before any work begins. Exercise good judgment and consult management for guidance in questionable situations.

The cost of repairing or replacing the system or appliance from which the water or steam escaped is not included as part of the tear out. There is no coverage for the system or appliance from which the water or steam escaped unless these items are damaged by a loss insured.

At times, it may be difficult to determine exactly which components make up the "system" or "appliance." Consult with management in such cases.

IV. FLOOD AND SURFACE WATER EXCLUSION

SECTION I - LOSSES NOT INSURED, paragraph 2, is subject to the following concurrent causation language:

"We do not insure under any coverage for any loss which would not have occurred in the absence of one or more of the following excluded events. We do not insure for such loss regardless of: (a) the cause of the excluded event; or (b) other causes of loss; or (c) whether other causes acted concurrently or in any sequence with the excluded event to produce the loss; or (d) whether the event occurs suddenly or gradually, involves isolated or widespread damage, arises from natural or external forces, or occurs as a result of any combination of these:"

A. Flood

"c. Water Damage, meaning:

(1) flood, surface water, waves, tidal water, tsunami, seiche, overflow of a body of water, or spray from any of these, all whether driven by wind or not;"

Homeowners forms FP-7955, FP-7945, and FP-7155.5 include tsunami and seiche.

B. Sewer Back-up

"(2) water or sewage from outside the residence premises plumbing system that enters through sewers or drains, or water which enters into and overflows from within a sump pump, sump pump well or any other system designed to remove subsurface water which is drained from the foundation area;"

There is no coverage for damage caused by sewer or drain back-up, or sump pump overflow or failure. Water or sewage entering from outside the residence premises plumbing system is excluded. An obstruction or other problem within the residence premises plumbing system that does not allow water to escape the system is a "fill up" rather than "back up" and is covered, unless the fill-up is caused by the pressure from or presence of tree, shrub, or plant roots.

Check for the presence of a Back-up of Sewer and Drain endorsement. If applicable, Losses Not Insured, 1.n., under the Homeowners policy FP-7955, which applies to Coverage A only, does not affect or apply to water damage otherwise covered under the Back-up of Sewer or Drain endorsement.

If water damage is the cause of loss under the Back-up of Sewer or Drain endorsement, although the tree roots could be considered the efficient proximate cause, the company position is to pay the water damage, but not include the expense for removal of tree roots as a part of the loss. The water back-up did not accidentally do any damage to the drainage system itself. The separate damage by the tree roots to the drain tile is excluded under the FP-7955 Homeowners policy.

If water damage occurs due to the presence or pressure of roots and the FP-7955 with no Back-up of Sewer and Drain endorsement is the policy applicable, Losses Not Insured, 1.n. applies, and there is no coverage for the water damage.

There may be specific law in your jurisdiction that would allow a different causation analysis, and you should follow the law of your state.

C. Subsurface Water

"(3) water below the surface of the ground, including water which exerts

pressure on, or seeps or leaks through a building, sidewalk, driveway, foundation, swimming pool or other structure."

Loss caused by subsurface water is not covered, regardless of the source of subsurface water.

In jurisdictions where case law is more restrictive than this interpretation, use this interpretation. If case law is broader than this interpretation, follow the case law.

D. Ensuing Damage

"However, we do insure for any direct loss by fire, explosion or theft resulting from water damage, provided the resulting loss is itself a Loss Insured."

E. Natural vs. Domesticated Water

It should be noted that paragraph 2 c. uses the unmodified term "water" and does not distinguish whether the water is domesticated or natural. We exclude natural surface water or subsurface water. However, loss caused by water that enters the dwelling from the surface of the ground which originates from a domestic source is not excluded by Losses Not Insured, 2.c.(1).

In jurisdictions where case law is more restrictive than this interpretation, use this interpretation. If case law is broader than this interpretation, follow the case law.

COVERAGE B - PERSONAL PROPERTY

"We insure for accidental direct physical loss to property described in Coverage B caused by the following perils, except as provided in SECTION I - LOSSES NOT INSURED:"

Damage to property insured under Coverage B - Personal Property is covered only if caused by one of the perils listed in SECTION I - LOSSES INSURED. However, even if damage is caused by a named peril, SECTION I - LOSSES NOT INSURED also applies.

A. Windstorm and Hail

"2. Windstorm or hail. This peril does not include loss to property contained in a building caused by rain, snow, sleet, sand or dust. This limitation does not apply when the direct force of wind or hail damages the building causing an opening in a roof or wall and the rain, snow, sleet, sand or dust enters through this opening."

If wind or hail damages the building, allowing rain, snow, sleet, sand, or dust to enter, we will cover loss to the personal property inside from rain, snow, sleet, sand or dust.

B. Accidental Discharge or Overflow of Water

"12. Sudden and accidental discharge or overflow of water or steam from within a plumbing, heating, air conditioning or automatic fire protective sprinkler system, or from within a household appliance."

Coverage applies only if water or steam escapes from one of the sources named. Under this peril (12), a waterbed is not considered a household appliance.

"This peril does not include loss:

a. to the system or appliance from which the water or steam escaped;"

In order for coverage to apply to the system or appliance, these items must first be

damaged by a loss insured.

"b. caused by or resulting from freezing;"

Losses caused by freezing are addressed in SECTION I - LOSSES INSURED 14.

"c. caused by or resulting from water or sewage from outside the residence premises plumbing system that enters through sewers or drains, or water which enters into and overflows from within a sump pump, sump pump well or any other system designed to remove subsurface water which is drained from the foundation area;...

Check for the presence of a Back-up of Sewer and Drain endorsement. If applicable, further coverage analysis is needed.

There is no coverage for damage to personal property caused by sewer or drain back-up, or sump pump overflow or failure. Water or sewage entering from outside the residence premises plumbing system is excluded. As with building coverage we must distinguish between "back ups" and "fill ups."

"d. caused by or resulting from continuous or repeated seepage or leakage of water or steam which occurs over a period of time and results in deterioration, corrosion, rust, mold, or wet or dry rot."

This language differs from the continuous or repeated seepage or leakage language in SECTION 1 - LOSSES NOT INSURED. Here, the leakage or seepage must occur over a period of time and result in deterioration, corrosion, rust, mold, or wet or dry rot.

C. Tearing Asunder, Cracking, Burning, Bulging of a Steam or Hot Water Heating System

"13. Sudden and accidental tearing asunder, cracking, burning or bulging of a steam or hot water heating system, an air conditioning or automatic fire protective sprinkler system, or an appliance for heating water. This peril does not include loss:

a. caused by or resulting from freezing; or

b. caused by or resulting from continuous or repeated seepage or leakage of water or steam which occurs over a period of time and results in deterioration, corrosion, rust, mold, or wet or dry rot."

As with peril 12, a waterbed is not considered a household appliance.

D. Freezing

"14. Freezing of a plumbing, heating, air conditioning or automatic fire protective sprinkler system, or of a household appliance.

This peril does not include loss on the residence premises while the dwelling is vacant, unoccupied or being constructed, unless you have used reasonable care to:

(1) maintain heat in the building; or

(2) shut off the water supply and drain the system and appliances of water."

Damage to personal property caused by freezing of a plumbing, heating, air conditioning or fire protective sprinkler system, or household appliance is covered. However, such losses are not covered if the dwelling is vacant, unoccupied, or under construction unless the

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insured uses reasonable care to maintain heat in the dwelling or has turned off the water supply and drained systems and appliances of water.

"Reasonable care" may vary depending upon time of year, geographic location, etc. Good judgment should be exercised when determining whether the insured has used "reasonable care." See OG 75-100 for more expanded information on freeze losses.

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